

In the Matter of JoAnn Bellini

DOP Docket No. 2002-939

(Merit System Board, decided January 25, 2006)

The appeal of JoAnn Bellini, a former Assistant District Parole Supervisor with the State Parole Board, concerning her return to her permanent title at the end of her working test period, effective August 6, 2001, was heard by Administrative Law Judge (ALJ) Sandra Ann Robinson, who rendered her initial decision on October 17, 2005. Exceptions were filed on behalf of the appellant and on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Merit System Board (Board), at its meeting on January 25, 2006, did not adopt the ALJ's recommendation to reverse the failure of the working test period and to grant permanent status in the title of Assistant District Parole Supervisor. Rather, the Board ordered that the appellant be granted a new four-month working test period.

DISCUSSION

The appellant received a regular appointment to the title of Assistant District Parole Officer on March 24, 2001. She commenced her duties at District Parole Office #2 in East Orange on Monday, March 26, 2001. On June 12, 2001, the appellant received her first Report on Progress of Probationer, which indicated that her performance during the first two months of her working test period, April 6, 2001 to June 6, 2001, was satisfactory. On June 21, 2001, the appellant received her Performance Assessment Review (PAR) for the period of March 24, 2001 to June 14, 2001, and her performance was rated as commendable at that time. Her final Report on Progress of Probationer was prepared on August 2, 2001. In that report, the appellant's work performance was rated as unsatisfactory, and she was notified that she was being returned to her former permanent title of Senior Parole Officer, effective August 6, 2001. An addendum to the report indicates that this action was taken due to the appellant's inability to develop a "working rapport" with her subordinates. The addendum cited several incidents in which the appellant's subordinates accused her of making statements that were perceived to be biased based on race, gender and religion, and it referenced an incident in which the appellant inappropriately instructed a subordinate over the radio to take a parolee into custody. Based primarily on the "irreconcilable" conflicts between the appellant and her staff, she was returned to her former permanent title. Upon the appellant's appeal, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case.

In her initial decision, the ALJ initially considered a procedural issue raised by the appellant. Specifically, the ALJ found that *N.J.A.C.* 4A:4-5.2(a) requires an employee's working test period to commence on the date of regular appointment, and *N.J.A.C.* 4A:4-5.2(b)2 states that the duration of a State employee's working test period is four months. The ALJ also noted that *N.J.A.C.* 4A:2-4.1(c) provides:

The notice [of an employee's return to his or her former permanent title at the end of the working test period] shall be served not more than five working days prior to or five working days following the last day of the working test period. A notice served after this period shall create a presumption that the employee has attained permanent status.

The ALJ found that the August 2, 2001 Report on Progress of Probationer was prepared and served on the appellant more than five working days following the end of her working test period. Given the presumption that the appellant, therefore, achieved permanency in her title of Assistant District Parole Supervisor, the ALJ further concluded that the appointing authority had not rebutted that presumption. The ALJ relied on the appellant's satisfactory rating on her first Report on Progress of Probationer, her commendable PAR rating during her working test period, and the assessment that several complaints by the appellant's subordinates were not credible. Specifically, the ALJ concluded that the appellant had demonstrated that she had not been properly trained on the proper protocol for relaying messages to subordinates via radio, and at least one of the complaints against the appellant for making a racially insensitive remark was determined to be unsubstantiated, following an investigation. Thus, the ALJ recommended that the appellant's return to her former permanent title be reversed and she be granted permanent status in the title of Assistant District Parole Supervisor.

In its exceptions, the appointing authority argues that the ALJ's strict construction of *N.J.A.C.* 4A:4-5.2 and *N.J.A.C.* 4A:2-4.1 does not comport with past or current practices of the Department of Personnel (DOP). The appointing authority asserts that the testimony demonstrated that, while the appellant's regular appointment date was March 24, 2001, the personnel documents associated with her promotion were processed and approved after that date. Thus, in accordance with DOP's practices, an employee's working test period commences on the first day of the pay period in which the personnel transaction was entered into the Personnel Management Information System (PMIS) and transmitted to DOP. In this case, the appellant's working test period started on April 6, 2001. The appointing authority reasons that this practice was adopted by the DOP because "[a]lthough a date of regular appointment can be retroactive, all employees are entitled to a current working test period to permit their performance to be properly evaluated."

In addition, the appointing authority argues that it presented ample evidence regarding the appellant's poor performance during her working test period. It underscores several incidents that demonstrate the appellant's poor supervisory skills and questionable judgment. In particular, the appointing authority relies on the appellant's unnecessarily reprimanding two subordinates for failing to turn in their daily activities reports, when, in fact, the employees were on approved leaves on the dates in question. The appointing authority also cites two complaints filed by subordinates, who claimed that the appellant undermined their authority in meetings with parolees by making inappropriate analogies regarding the relationship between a parole officer and a parolee. Finally, the appointing authority relies upon the incident involving the appellant's radio transmission to a subordinate, and it suggests that this transmission unnecessarily placed the employee in danger.

In her exceptions, the appellant requests additional remedies, including differential back pay and counsel fees.

Upon review of the initial decision and the exceptions filed in this matter, the Board concludes that the appellant should be granted a new working test period in the title of Assistant District Parole Supervisor. Initially, the Board notes that all documentation related to the appellant's working test period indicates that it commenced on April 6, 2001 and ended on August 6, 2001. These dates appeared on both of the Reports on Progress of Probationer that the appellant received during her working test period. Therefore, the granting of permanent status based on the procedural irregularities presented in the instant matter would be inappropriate. Further, the Board cannot ignore the legitimate performance related issues raised by the appointing authority, particularly those that were reported within the last week of her working test period. Throughout the month of July, several of the appellant's subordinates submitted written complaints regarding her supervisory style, including allegations that the appellant made inappropriate comments in front of parolees. These reports, which signaled a strained relationship between the appellant and her subordinates, formed the primary basis for her unsatisfactory rating at the end of her working test period. On the other hand, the Board also cannot ignore that the appellant's performance was given high ratings throughout the majority of her working test period, and the majority of the referenced complaints were brought to her attention just days before the expiration of her working test period, giving her little opportunity to reform her conduct and performance. Accordingly, based on the totality of the procedural and substantive issues presented, the Board finds that the appellant should be returned to the title of Assistant District Parole Supervisor and granted a new four-month working test period.

Additionally, the Board finds that the appellant is not entitled to back pay or counsel fees. In non-disciplinary appeals, such as an appeal of a release at the end of the working test period, the standard for determining whether an appellant is entitled to back pay and counsel fees is governed by *N.J.A.C. 4A:2-4.3(c)* and *N.J.A.C. 4A:2-1.5(b)*. *N.J.A.C. 4A:2-1.5(b)* provides, in pertinent part, that back pay and counsel fees for appeals that are not based on disciplinary action or the challenge of the good faith of a layoff “may be granted . . . where the Board finds sufficient cause based on the particular case.” In this case, the Board has found that the appellant should be reinstated to the title of Assistant District Parole Supervisor and afforded a new four-month working test period. This conclusion is based on the totality of the circumstances in this case, including procedural irregularities in the conduct of the appellant’s working test period, her satisfactory performance during the majority of her working test period, and the Board’s concern that she was not afforded an adequate opportunity to remedy performance deficiencies that were brought to the appellant’s attention during the latter part of her working test period. Therefore, sufficient cause has not been demonstrated in this matter to award back pay or counsel fees. *Compare, In the Matter of Randy Geis* (MSB, decided November 20, 2002) (Board awarded permanent status, back pay, benefits and seniority where the appellant was not released for specific work-related deficiencies and the record established that he had otherwise satisfactorily completed his working test period) and *In the Matter of Tracy Bowers* (MSB, decided November 10, 1992) (The appellant was entitled to permanent status and back pay where the record established that the appellant had satisfactorily completed his working test period and the appointing authority nonetheless improperly released him from employment).

Finally, an additional issue warrants comment. During the hearing and in its exceptions in the instant matter, the appointing authority raises a concern regarding the DOP’s procedures relative to employees’ working test periods. That is, the DOP routinely permits appointing authorities to submit requests to make regular appointments for the DOP’s approval *after* they have been made, and the DOP regularly approves the recording of retroactive dates of regular appointment. However, in State service, the DOP will *not* approve a retroactive date for the commencement of the working test period. This practice results in the situation presented here. The appellant commenced working in her promotional title on or about March 24, 2001. At some point after that date, this appointment was submitted for the DOP’s approval. When the DOP approved the appellant’s appointment, it allowed her March 24, 2001 appointment date to be recorded as such but required that her working test period commence at a point in time after the DOP’s approval was issued. In the appellant’s case, her working test period commenced two weeks after her regular appointment date. The current practice results in the uncertainties evident in this case concerning the ending date of the appellant’s working test period and, in turn, the date on which she should have attained permanent status.

In light of the Board's concern with the above practices, the Division of Human Resource Information Services is directed to undertake a review of its practices and present recommendations to the Board regarding the most efficient manner in which to address the issues presented in this matter. These recommendations should be returned to the Board within 60 days of receipt of this decision.

ORDER

The Merit System Board finds that the appointing authority's action in releasing JoAnn Bellini at the end of her working test period was not justified. Therefore, the Board reverses the release and orders that the appellant be reinstated to the position of Assistant District Parole Officer and be afforded a new four-month working test period. Moreover, the Board orders that back pay and counsel fees be denied.

The Board further orders the Division of Human Resource Information Services to reevaluate its current practices regarding the commencement of employees' working test periods and present recommendations to the Board as set forth above within 60 days of receipt of this decision.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.